

Letter of Findings Number: 08-0653P
Sales Tax
For Tax Year 2008

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration–Faulty Payment Penalty.

Authority: IC § 6-8.1-10-5; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is a business operating in Indiana. Taxpayer made a sales tax payment via electronic funds transfer ("EFT"). When the Indiana Department of Revenue ("Department") attempted to transfer the funds from Taxpayer's bank, the transfer did not go through due to an incorrect account number. As a result, the Department issued a proposed assessment for the sales tax and for a faulty payment penalty. Taxpayer protests the imposition of penalty. Further facts will be supplied as required.

I. Tax Administration–Faulty Payment Penalty.

DISCUSSION

Taxpayer protests the imposition of penalty on its May 2008 sales tax payment. When the Department attempted to transfer the funds from Taxpayer's account, Taxpayer's bank did not approve the transfer, due to an incorrect account number. The account number should have had an additional digit on the end. The lack of this digit resulted in an incorrect account number and the funds were not transferred.

The Department refers to IC § 6-8.1-10-5, which states:

(a) If a person makes a tax payment with a check, credit card, debit card, or electronic funds transfer, and the department is unable to obtain payment on the check, credit card, debit card, or electronic funds transfer for its full face amount when the check, credit card, debit card, or electronic funds transfer is presented for payment through normal banking channels, a penalty of ten percent (10[percent]) of the unpaid tax or the value of the check, credit card, debit card, or electronic funds transfer, whichever is smaller, is imposed.

(b) When a penalty is imposed under subsection (a), the department shall notify the person by mail that the check, credit card, debit card, or electronic funds transfer was not honored and that the person has ten (10) days after the date the notice is mailed to pay the tax and the penalty either in cash, by certified check, or other guaranteed payment. If the person fails to make the payment within the ten (10) day period, the penalty is increased to one hundred percent (100[percent]) multiplied by the value of the check, credit card, debit card, or electronic funds transfer, or the unpaid tax, whichever is smaller.

(c) If the person subject to the penalty under this section can show that there is reasonable cause for the check, credit card, debit card, or electronic funds transfer not being honored, the department may waive the penalty imposed under this section.

The Department directly notified Taxpayer via U.S. mail of the problem with the transfer and, in accordance with IC § 6-8.1-10-5, sent a notice for payment of the original amount of the transfer plus a ten percent penalty. Taxpayer did not respond within ten days and, as provided by IC § 6-10-8.1-5(b), the penalty was increased to one hundred percent of the original amount which was supposed to be transferred.

Taxpayer protests that its bank made multiple attempts to inform the Department of the correct account number. The Department notes that the account number which was rejected by Taxpayer's bank was registered with the Department by Taxpayer. Also, the Department notes that the bank was not authorized to make changes to Taxpayer's account with the Department. It is for the protection of all taxpayers that the Department only allows properly authorized changes to a taxpayer's account numbers. Therefore, it was Taxpayer's responsibility to inform the Department of changes to account numbers.

The Department notes that Taxpayer had a similar problem with its withholding account number in 2007. At that time, the Department waived penalty due to the fact that this was an understandable and first time error. In this case, the same problem arose with Taxpayer's sales tax account in 2008. Taxpayer strongly believes that the Department should waive this penalty too.

The Department cannot agree with this position. The Department followed the provisions of IC § 6-8.1-10-5. Taxpayer's bank was not authorized to make changes to Taxpayer's account number. Taxpayer registered the incorrect account number for sales tax, and Taxpayer was required to inform the Department of changes to that account number for sales tax. The Department waived the penalty in 2007 when Taxpayer had a similar problem with its withholding account. Taxpayer should have checked and informed the Department that there was a problem with its sales tax account numbers as well. Taxpayer could have paid a ten percent penalty by paying

within ten days of the Department's mailed notice. Taxpayer did not respond within ten days and the penalty was properly increased to one hundred percent, as provided by IC § 6-8.1-10-5(b).

FINDING

Taxpayer's protest is denied.

Posted: 05/27/2009 by Legislative Services Agency

An [html](#) version of this document.